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VOL. XI. No. 1993. HONOLULU, TERRITORY OF HAWAII, WEDNESDAY, NOVEMBER 13 1901 PRICE 5 CENTS.

THE BAILIFF ACT ATTACKED IN COURT

The Entire Jury Panel Is Challenged By Robertson.

CLAIMS THAT THE LAW WAS IRREGULARLY PASSED

Did Not Have Three Readings in Each House—Dual Language Point May Be Raised.

Attorney A. G. M. Robertson opened an attack on the Bailiff Act in the First Circuit Court, before Judge Humphreys this morning. It was after a demurrer to the indictment of William K. Rathbun had been overruled and the defendant had pleaded not guilty.

While Deputy Attorney General J. W. Cathcart was awaiting the court's response to his request to set the case for trial, Mr. Robertson on behalf of Rathbun entered a challenge to the entire panel of jurors for the November term. The ground was briefly stated as being that the jury was summoned by an officer of that court without authority of law.

Mr. Robertson asked to have a time set for argument of the challenge. Counsel for defendant desired to produce evidence on the matter.

"We hold that the Bailiff Act was irregularly passed by the Legislature," concluded Mr. Robertson.

Mr. Cathcart wished to have the matter set for the earliest time possible, as it affected other cases besides that under which it had been presented.

Judge Humphreys set the hearing for Monday morning.

Mr. Robertson was asked outside the courtroom what line of attack it was proposed to take against the Bailiff Act.

"The principal point will be that the bill was not read three times in each house before passage," was the reply.

Being asked if the question of dual language in the Legislature would be raised, Mr. Robertson said that he had not quite decided about raising that question.

The demurrer that was overruled was on the point that different assignments of perjury were improperly made in one count of the indictment.

Mr. Cathcart produced a long array of authorities, all one way, showing that indictments for perjury might differ in this respect from those for other offenses and that it was enough to convict if one assignment were proved though the others fell to the ground.

Mr. Robertson admitted that the Deputy Attorney General had the books all on his side. Still he believed the rule there laid down to be illogical and inconsistent with the usual practice in criminal jurisprudence. Suppose there were twelve assignments of perjury and each man of the jury took that but one of them had been proved, every juror differing from the rest as to which one, then the defendant would be convicted virtually by one juror against eleven.

Judge Humphreys thought the reason for the rule probably lay in the fact that the charge of perjury was based on the narrative of a witness as a whole, which if false in any particular would render him guilty. If the assignments, instead of being grouped in one count, were made separate indictments it might make the defendant liable to conviction of so many separate offenses of perjury as would involve sentences cumulating in a term far beyond that of his natural life. There was a difference, in a case of unlawful liquor selling which had been suggested by defendant's counsel, because every separate sale of

KALANIANA'OLE LEADER

The natives are talking on the streets today about the proposition to put up Prince Jonah Kalaniana'ole as one of the leaders of the Home Rule party and the sentiment has already gained a great deal of strength. He is looked upon by the old people as a natural leader and the younger element are only too glad to have an ally in their ranks.

Prince Jonah Kalaniana'ole is a young man with a very forceful character who, when he starts out to do a thing, does not dilly-dally, but rushes straight to the front and takes a position by storm. He has always shown this phase of character and this is why the natives are so anxious to have him an active worker in their ranks. With him as a leader, the natives believe they will surely hold together.

NATIVE TREE GROWTH

SUGGESTION OF A LADY REGARDING NEW PARKS

Hawaiian Trees and Shrubs Becoming Extinct—Beautiful Would be a Park of Tropical Luxuriance.

Lately the question has been broached as to whether there has not been too much exotic selection in official tree planting and forest propagation not only in and about Honolulu but throughout the Territory. On this subject a Hawaiian lady who is well known as an enthusiastic cultist of house and garden plants has addressed the following remarks to a representative of the Bulletin:

"I have read an article in the Advertiser on 'Appropriate Trees,' in which the writer refers to the 'bordered distinctiveness of other zones' and says the tourist is not charmed with familiar growths of our native soil.

"It is true, Hawaiian trees, some of which are charmingly attractive, and also pretty creepers are beginning to become extinct. In fact, it is true with regard to the larger proportion of our mountain vegetation.

"Now I think it would be quite in place for you to agitate for Hawaiian tropical trees and other growths of the native soil through the Bulletin. There are a couple of more parks in prospect. Why not suggest that one or two of these future parks be entirely planted in Hawaiian trees, creepers and ferns?

"Surely nothing would be more charmingly attractive than a public park in tropical luxuriance. We have enough of foreign trees and shrubbery in our public grounds.

"In the planting of a park much care will be required for the successful transplanting of our mountain trees, Hawaii and Maui would probably be the only islands where the full variety of Hawaiian vegetation could be produced."

ROSEMARY

"Rosemary," in which Mr. James Neill and supporting company will be seen here at the Opera House tomorrow evening, has one of the sweetest love stories running throughout the play that ever came from the pen of a playwright. The story opens in England in the year 1838, with the elopement of pretty Dorothy Cruickshank and William Eastwood. They come to grief on the start of their flight and are rescued from an uncomfortable situation by Sir Jasper Thorndyke, a kindly squire of 40 years, who houses them for the night. The angry parents arrive soon after in hot pursuit, and are also taken care of by Sir Jasper, who acts as peacemaker and afterward takes all the parties concerned off to London to view the coronation of Queen Victoria. The elderly squire falls in love with Dorothy, and the latter returns it, but only as the love of a child for a father. It is during the visit to London that he realizes the hopelessness of his affection, but in order to cherish her memory he buys the house they have occupied during the coronation as a sacred shrine to return to on every anniversary of this occasion. The final act shows Sir Jasper, a tottering old man of 90 years, returning for the last time to this shrine.

Mr. Neill will play the part of Sir Jasper.

Chinese Fair Saturday.

SPECIAL SESSION BEING DISCUSSED

On Every Hand Dole is Blamed for Stubbornness.

OPINIONS OF SEVERAL MEN ON THE MATTER

Trips of Superintendent of Public Works Boyd and Marston Campbell, His Assistant, Referred To.

Since the interview with Treasurer Wright appeared in the Bulletin yesterday the talk of the streets has been on the special session that the heads of the various departments of the Territorial Government see no way out of and that the Governor persists in saying can be gotten along without. Below will be found a few things that are being said about today and that have been brought out by the interview mentioned.

A very prominent man was seen walking down King street today, and he was asked what he knew. Following out what had evidently been his train of thought before he encountered the reporter, he said: "A special session is certainly needed. When the Treasurer of the Territory says so then it is time for deep thought."

"Why, I had a conversation just now with a man and he asked me this question: 'Don't you think that the trips of Superintendent of Public Works Boyd and his assistant, Marston Campbell, are simply bringing out more and more every day the need of a special session? Every place these officials have gone they have seen the need of public improvements. They are spending money on their trips, and yet there is no possibility of their work coming to any good, for there is no money in the Treasury to carry out the recommendations they keep making.'

Another prominent man, a real estate agent, had the following to say: "I have not a doubt in the world that the present condition of the money market in the Territory is being caused by the stubbornness of Governor Dole in refusing to call a special session. What such a course would mean, any man can plainly see. It will be the means of setting money into circulation where at the present time it is tied up so tight that we are all in trouble."

"I will just give you one illustration of the tightness of the market, an illustration that I have had occasion to run up against many times, one occurring the past fortnight. Not long ago I was in the habit of demanding and getting half cash on pieces of property worth from four to five hundred dollars. Now I am lucky to get \$25. It is a case of setting at naught the land is paid for, or of not selling at all. People simply have not the money and the keynote to the whole thing is the present condition of the Treasury of the Territory. There is not enough money coming in to pay the running expenses and the Treasury is getting deeper into the hole every day. When the Government is bankrupt, then you want to look out for the money market."

Still another man was met farther along the road, and he had the following to say: "I can state on good authority that, during the past few days, 194 shares of the Apukia Sugar Company, which, by purchase of a controlling interest, has become in reality a part of Ewa plantation, sold at \$110, and it will be remembered that within a year past J. O. Carter said that the stock was worth \$300. There has been no change in the intrinsic value of the plantation stock, and yet the stock has gone down to the price I have quoted. Where does this state of affairs come from? It is simply the fault of the money crowd that now has the situation in their hands. I dislike very much to say it, but it looks very much to me as if the Governor is playing in with the crowd I mentioned in refusing to grant the special session that is so much needed."

"I have learned something else in connection with this recent buy of the Apukia stock that shows conclusively there has been a gigantic scheme worked. It is stated that the very best of authority that this stock will pay not less than 50 per cent on the capitalization, in dividends, within the coming year."

So goes the talk all over the streets today. Governor Dole is being blamed on all hands. A great many other conversations might be given here, but the situation is too well known and understood. As a closing interview, the following from a business man of the city might be of interest:

It is just this. Governor Dole will have to take the responsibility of a bankrupt government or call a special session. Here all over the islands you will find that the roads and streets that have cost millions of dollars to build are going to rack and ruin. By the application of a little more money at present time, these roads and streets would be saved, but it is there is no special session, it will be a case of wait until the next regular session and by that time these thoroughfares will be in such condition that only by the expenditure of three or four times the money it would cost at the present time, will it be possible to put them in good condition again. For the life of me I cannot see why there is this stubbornness on the part of the Governor. It is certainly nothing more than a stubbornness, for a blind man could see the necessity of money in the Treasury as soon as possible."

DEBT IS YET UNPAID

NO MONEY COLLECTED TO PAY CASTLE & COOKE

Monthly Meeting of Chamber of Commerce This Afternoon --- War on Rats Will Probably Be Considered.

The monthly meeting of the Chamber of Commerce is called for 3:30 o'clock this afternoon. While there is not a long order of business in sight, several matters of great importance will be due for consideration.

It is ascertained by inquiry that "not a thing" has been done yet toward carrying out the arrangements made last month for paying Castle & Cooke the eight thousand and odd dollars due them on the Quarantine wharf and warehouse. An apportionment of the money among business houses was adopted then, the committee reporting it being continued in office to collect the amounts.

Now another quarantine subscription comes up to the Chamber, that for expenses of ridding the waterfront of rats. This matter will probably be one of the chief items in today's business. Secretary Spencer will present a letter from the Louisiana Purchase Exposition Company inviting the Chamber of Commerce to take an active interest in the World's Fair to be held at St. Louis in 1903. Accompanying the invitation a variety of literature pertaining to the event has been received. Among the publications is a monthly magazine, "World's Fair Bulletin," containing forty pages and issued at the price of \$1.50 a year. The magazine is well illustrated. In the account of the driving of the "ceremonial stake," this being the start of work on the World's Fair grounds, which took place on September 3.

TRUANT JURY FINED

JUDGE ESTEE'S MILD DOSE OF DISCIPLINE

United States Case Breaks Down—Effort to Complete the Edmunds Act—Trials This Afternoon.

Judge Estee mildly disciplined a truant jury in the United States District Court this morning. F. G. Smith, of the good men and true, answered not when his name was called. An attachment was issued under which Marshal Hendry produced the missing man about 11 o'clock. The Court let him off with a fine of \$2.31 just to cover the costs of the writ of attachment.

Henry Arinas and Angela Estada were placed on trial for adultery, the following jury being empaneled: John Callahan, J. E. Schubert, Charles E. Murray, R. M. Duncan, W. J. Hickey, George H. Turner, John D. Holt, A. D. Scroggy, E. E. Mosseman, George P. Thielier, H. C. Morton and Harry P. Davidson.

The United States put on three witnesses, the defense none. Mr. Creighton for defendants moved that the court instruct the jury to render a verdict of not guilty. After argument the motion was granted and the jury acted accordingly.

The trial of Chung Pui and Kosaki was set for this afternoon. Judge Estee announcing that if possible the trial of Kuda and Yamaguchi, the last of the Edmunds Act cases, should also be got through with today.

CHARGES GROSS CHEAT.

A warrant has been sworn out for the arrest of J. Wassencrook on the charge of gross cheat. J. N. Henry, who makes the complaint, alleges that Wassencrook obtained \$550 from him for the purpose of paying off a certain amount due on furniture that was being held in San Francisco subject to his payment of the amount. He alleges further that Wassencrook told him he intended to pay off the amount and then send the furniture to Honolulu. It would be sold here and then the money borrowed would be paid back. Henry says further still that not a cent of the money has been paid and he has seen nothing of the furniture.

While the police will make due and diligent search for the man mentioned in the warrant, it is not likely that he will be found, for it is learned on good authority that he has gone to San Francisco.

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THE BARK RITHEH HAS STORMY TRIP

Off Molokai on Friday and Encountered Bad Gale.

DRIVEN TWO-HUNDRED MILES TO NORTHWARD

Worst Storm Ever Felt by Captain McPhail—Regular Cape Horn Weather—New Mate.

The bark R. P. Ritheth arrived here this morning after a trip that was remarkable for rough weather and storms after the islands were sighted. She left San Francisco seventeen days ago with a light cargo and made fair progress with good weather until Friday evening last when she was off Halawa, Molokai. There about midnight a terrific northeast gale struck her and she was compelled to lay to. Captain McPhail was of the opinion that in the morning the storm would be over. Instead of subsiding however the wind and sea continued to grow more fierce and soon the vessel was laboring heavily under topsails. With the weather as it was it was decided to head for the north to keep the vessel off shore and as the storm increased she was driven before it until Sunday at 4 o'clock in the afternoon when as suddenly as it came the wind subsided and the vessel was put back after being driven about two hundred miles off her course.

The Ritheth had a small deck load of potatoes, gasoline and other small stuff and most of this was lost or so badly battered that it will be of but little use to the consignees. Some of the deck load was saved by being put below soon after the waves began to come on deck. Captain McPhail reports the storm as regular Cape Horn weather and worse than any that he has been in all his trips to the islands.

The vessel being light was at times looked as if she would roll her masts and many times she was on her beam ends and as a result of the buffeting she received she has quite a list to port through the partial shifting of her cargo. When the great waves came aboard the deck cargo and sailors were badly mixed up and although she was high out of water she took more water aboard than when she has been in rough weather deep laden with sugar.

On Sunday afternoon the vessel's head was turned for Honolulu again and she made fair weather of it until she was picked up this morning by the Fearless. Several times during the continuance of the gale it looked as if it was all up with the staunch bark and although the storm subsided the weather continued thick and until the light on Molokai was picked up at midnight last evening, the position of the vessel was not certain.

Captain McPhail and his crew were very glad to get in the lee of the island and after their terrible experience find themselves safe in port. That there were no accidents is looked upon as the greatest good luck and fortunately for the vessel the deck load which was taken on at San Francisco was a small one.

This trip the Ritheth comes without man Reynolds who since the vessel was here has been promoted to the command of a ship of his own. His place has been taken by an eastern man, by name Morse, who has had a long experience in vessels in deep water service.

Captain McPhail was congratulated by his many friends ashore this morning on his lucky escape from disaster in the terrific gale which has made its effect felt on different islands of the group. With the strong gale and high sea encountered he considers himself fortunate that he did not reach Honolulu by way of the Fall, or by steam, from Molokai.

W. W. Needham met with a most painful accident Monday noon while riding home on his bicycle. He was about to cross the tram track in front of an approaching car on Beretania street near Punchbowl when the wheel slipped on the track, throwing Mr. Needham to the ground with such force that his knee cap was broken. He narrowly escaped being run over by the car.

A FOXY TRUANT.

Manuel Teixeira, a thirteen year old Portuguese boy, was in the Police Court this forenoon on the charge of truancy. The arrest was made by one of the truant officers yesterday afternoon at the request of one of the teachers of the school to which Manuel has been in the habit of going. It seems that the little fellow has for some time past been going to school in the morning and of leaving for parts unknown at about 11 o'clock.

WILLIAM ESTER'S ABATEMENT PLEA

Slayer of Toyo Jackson Fights Against Indictment.

JURY SPENDS NIGHT IN HAWAIIAN HOTEL

San Francisco House Sues Honolulu Store-keeper—Protracted Argument in Supreme Court—Papers on Files.

WHERE CHILDREN SLIDE

"TOBOGGAN" PLACE UP ON EWA RIDGE OF TANTALUS

Plea for Playgrounds and Public Park For School Children of City—Honolulu Weighed in Balance.

On the Ewa ridge of Tantalus is now a place in the thick grass that has been worn down until it is as smooth as glass and as slippery as ice. It is to this spot that for months past children from all over the city have been going to while away the hours of the afternoon when their duties at school have been completed. Every day children may be seen trudging up the Punchbowl road carrying barrel staves worn smooth by constant use. The walk to the place does them all the good in the world, and when they begin to slide down the hill they certainly have a most delightful time. Each time it is a case of walk back again when they reach the bottom of the slide, but the fun is worth it and they get the exhilarating exercise in the fresh air.

A gentleman who happened to see the children sliding down this place a number of days ago said it was a pity that the children of the city were not given more opportunity for just such places as the one on Tantalus. In the city in the United States of the size were there such poor facilities for the enjoyment of the children as in Honolulu. The schools of the city were crowded and it was about time some steps should be taken toward the establishment of a public playground.

This place had been picked out by the children and it had been converted into a healthful playground simply by constant sliding. It showed the natural trend of the youthful mind when the duties of school were over, and this tendency should be fostered and not nipped in the bud, as seems to have been the case in Honolulu.

MRS. MACFARLANE RECOVERING.

The many friends of Mrs. Eliza MacFarlane and family will be pleased to learn that the venerable lady is progressing very favorably toward recovery from the unfortunate accident whereby her hip joint was fractured. This gratifying condition of the patient can, at her age of seventy-seven years, be attributed to a remarkably sound constitution and a serene mental temperament.

SAVED COAL OIL.

Captain Nelson of the schooner Maria E. Smith was up before Collector of Customs Stackable yesterday on a charge of sailing his vessel on the last trip down from the Sound without putting out the side lights at night. The matter has been placed in the hands of the United States district attorney for an opinion.

AN IDEAL HUSBAND.

Of the several clever plays from the pen of Oscar Wilde, the one universally admitted to be his cleverest is "An Ideal Husband," in which Mr. James Neill and company will be seen here at the Opera House. Mr. Neill will be seen as Lord Forsythe. The role has a delicate fantastic charm and clever dandyism.

Mr. Wright's Interview.

It was "outstanding warrants" not "bonds" that Treasurer Wright mentioned in his interview on Territorial finances reported yesterday. The amount of \$1,432,000 for permanent improvements wanted should not have been stated as exclusive of the round million probably to be required by the Public Works department after Mr. Boyd completes his official tours of the islands.

New Managers.

W. A. Baldwin, a nephew of Hon. H. P. Baldwin and manager of Kahuku plantation, this island, has been appointed manager of Makaweli plantation on Kauai which place was left vacant by the death of Hugh Morrison. Mr. Baldwin's place at Kahuku will be taken by Andrew Adams who has served a number of years at Ewa plantation and Spreckelsville. Mr. Adams was at one time on the editorial staff of the Advertiser and is an intimate friend of J. B. Castle.

WILLIAM ESTER'S ABATEMENT PLEA

Slayer of Toyo Jackson Fights Against Indictment.

JURY SPENDS NIGHT IN HAWAIIAN HOTEL

San Francisco House Sues Honolulu Store-keeper—Protracted Argument in Supreme Court—Papers on Files.

After being out all night, having beds at the Hawaiian hotel, the jury returned a verdict before Judge Humphreys this morning, finding Enoka guilty of larceny second degree. J. M. Vivas has brought suit, on a Hilo District Court judgment, against Maria G. Levinho, with A. G. Silva, treasurer of the Portuguese Mutual Benefit Society, garnishee for \$162.32. The Meyerstein Company of San Francisco has brought suit against I. See Ehtaroo, a Honolulu merchant, for \$516 on a bill of goods.

Mrs. Vida has given a bond in \$1000, with H. C. Vida as surety, on her injunction suit against Charles B. Gray.

Sylvester Stappers, as executrix of the will of Christian H. Bertelmann, and as guardian of the minor children of deceased, has by her attorney, T. McCants Stewart, filed demurrers to the suit of Frank C. and Henry G. Bertelmann against Francis M. Brooks and others.

Schwitzer & Co. vs. C. J. Finkel was still being argued before the Supreme Court this morning. Argument began before noon recess yesterday.

Judge Humphreys sentenced Enoka to imprisonment at hard labor six months and to pay costs.

Yin Soon pleaded guilty to two indictments for larceny second degree. He was sentenced in each case to imprisonment at hard labor one year.

Kiki is on trial this afternoon for manslaughter first degree, the following jury being empaneled: Jonah K. Nahia, Jacob Lango, William Herick, George W. Macy, John A. Noble, Guy Livingston, Arthur K. Jones, Louis A. Rostin, Joseph Richard, John S. Andrade, Ruby A. Dexter and Hermann Levy. The defendant is accused of causing the death of Charles Bombay on May 21, 1901, without malice aforethought.

An amended plea in bar has been filed by Leon M. Strauss on behalf of William Ester, the gist of which is that, by reason of defendant's former conviction and sentence to twenty years' imprisonment for manslaughter by the slaying of Toyo Jackson, his present indictment for the same offense should be dismissed. Ester is one of the transition period prisoners not at large under a writ of habeas corpus.

Attorney Chillingworth found himself in very much of a pickle this morning. He was due in the Police Court at 9:30 o'clock and in the Federal Circuit and Supreme Courts a half-hour later. At the police station this forenoon, he asked another attorney for advice in the matter, and the latter held out his hand for a retainer. Mr. Chillingworth, having got a taste of the medicine that is usually prescribed by attorneys, laughed and walked off, but the retainer was not forthcoming.

William Richard of Honolulu, who some time ago was badly injured in the foot by the accidental discharge of his shotgun, is in the city. He has already undergone two operations on the injured foot, and in a few days he is to undergo another and more serious one. The physicians in charge of his case will take a piece of flesh from one part of his foot and graft it in the place that was torn away and that shows such a disinclination to heal.

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